

ORIGINAL

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554

In the Matter of

Federal-State Joint Board on
Universal Service

Virgin Mobile USA, L.P.

Petition for Designation as an Eligible
Telecommunications Carrier
in the State of New York

FILED/ACCEPTED

DEC - 5 2007

Federal Communications Commission
Office of the Secretary

CC Docket No. 96-45

PETITION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER
IN THE STATE OF NEW YORK

Peter Lurie
General Counsel and Co-Founder
Virgin Mobile USA, L.P.
10 Independence Blvd
Warren, NJ 07059
(908) 607-4017

Antoinette Cook Bush
John M. Beahn
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue
Washington D.C. 20005
(202) 371-7000

December 5, 2007

No. of Copies rec'd
List ABCDE

047

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	2
	A. Company Overview	2
	B. Lifeline/Link-Up Program	3
III.	THE NEW YORK PUBLIC SERVICE COMMISSION HAS PROVIDED AN AFFIRMATIVE STATEMENT THAT IT DOES NOT REGULATE CMRS CARRIERS FOR ETC DESIGNATION PURPOSES.....	5
IV.	VIRGIN MOBILE REQUESTS ETC DESIGNATION IN ITS NEW YORK SERVICE AREA FOR PARTICIPATION IN THE LIFELINE/LINK-UP PROGRAM.....	6
	A. Virgin Mobile Requests Statewide ETC Designation	6
	B. Virgin Mobile Requests ETC Designation for Participation in the Lifeline/Link-Up Program	7
V.	VIRGIN MOBILE SATISFIES THE REQUIREMENTS FOR DESIGNATION AS AN ETC	8
	A. Virgin Mobile Is a Common Carrier.....	8
	B. Virgin Mobile Will Provide the Supported Services Through Resale.....	8
	C. Virgin Mobile Offers All of the Required Services and Functionalities	9
	1. Voice Grade Access to the Public Switched Telephone Network.....	9
	2. Local Usage.	10
	3. DTMF Signaling or Its Functional Equivalent	10
	4. Single-Party Service or Its Functional Equivalent.....	10
	5. Access to Emergency Services	11
	6. Access to Operator Services	11
	7. Access to Interexchange Services	11
	8. Access to Directory Assistance.....	11
	9. Toll Limitation.....	11
	D. Advertising of Supported Services	12
VI.	DESIGNATION OF VIRGIN MOBILE AS AN ETC WOULD PROMOTE THE PUBLIC INTEREST	13
	A. Goals of the Communications Act.....	13
	B. Impact on the Universal Service Fund.....	14
VII.	ANTI-DRUG ABUSE CERTIFICATION	15
VIII.	CONCLUSION.....	16

SUMMARY

Virgin Mobile USA, L.P. ("Virgin Mobile") is seeking designation as an Eligible Telecommunications Carrier ("ETC") throughout the State of New York, pursuant to section 214(e)(6) of the Communications Act of 1934, as amended ("Act"), solely for purposes of offering services supported by the Universal Service Fund's ("USF") Lifeline/Link-Up program. As described herein, Virgin Mobile is a Mobile Virtual Network Operator that purchases wireless network services on a wholesale basis from Sprint Nextel, which provides the nationwide wireless backbone and infrastructure for Virgin Mobile's service.

While the Act reserves the authority to designate entities as ETCs to state public utility commissions, the Commission may perform ETC designations for entities not subject to the jurisdiction of a state public utility commission pursuant to section 214(e)(6) of the Act. The New York Public Service Commission ("PSC") has provided an affirmative statement that it does not exercise jurisdiction over wireless providers for purposes of ETC designation. Accordingly, pursuant to section 214(e)(6) of the Act, the Commission has authority to designate Virgin Mobile as an ETC in the State of New York.

Virgin Mobile meets all of the necessary requirements for ETC designation under section 214(e)(1). Virgin Mobile understands that section 214(e)(1)(A) of the Act requires an ETC to offer supported services over its own facilities or a combination of its own facilities and the resale of another carrier's services. Virgin Mobile is concurrently seeking forbearance from enforcement of this facilities requirement to permits its designation as an ETC in the State of New York. Virgin Mobile respectfully requests that the Commission simultaneously review the instant request for ETC designation with its Petition for Forbearance to enable Virgin Mobile to promptly provide Lifeline/Link-Up services to qualifying customers in the State of New York.

Designation of Virgin Mobile as an ETC in New York to offer services supported by the *Lifeline/Link-Up program would promote the public interest since it would provide qualifying* New York customers with lower prices and higher quality wireless services. Many low-income customers in New York have yet to benefit from the intensely competitive wireless market because of financial constraints, poor credit history, or intermittent employment. Virgin Mobile's prepaid services offerings are ideally suited to provide these customers with reliable and cost-effective wireless services. As an ETC, Virgin Mobile would be able to provide discounted and affordable services to these consumers—many of whom are among the intended beneficiaries of USF support.

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
Washington D.C. 20554**

In the Matter of)
)
)

Federal-State Joint Board on)
Universal Service)

Virgin Mobile USA, L.P.)
)
)

Petition for Designation as an Eligible)
Telecommunications Carrier)
in the State of New York)
)
)

CC Docket No. 96-45

**PETITION FOR DESIGNATION AS AN
ELIGIBLE TELECOMMUNICATIONS CARRIER
IN THE STATE OF NEW YORK**

I. INTRODUCTION

Virgin Mobile USA, L.P. ("Virgin Mobile"), by its undersigned counsel and pursuant to section 214(e)(6) of the Communications Act of 1934, as amended ("Act"), and section 54.201 of the regulations of the Federal Communications Commission ("FCC" or "Commission"), hereby petitions (the "Petition") the Commission for designation as an eligible telecommunications carrier ("ETC") in the State of New York. As more fully described below, Virgin Mobile seeks ETC designation in New York only for purposes of participation in the Universal Service Fund's ("USF") Lifeline/Link-Up program, and does not request designation to offer services supported by the high-cost program.

Since the New York Public Service Commission ("PSC") lacks jurisdiction to consider Virgin Mobile's request for designation as an ETC, the Commission, under section 214(e)(6) of

the Act, has jurisdiction to consider and grant the instant Petition.¹ Virgin Mobile satisfies the requirements for designation as an ETC in the State of New York and grant of Virgin Mobile's Petition for Forbearance, which the company is concurrently filing herewith, will provide Virgin Mobile with all of the statutory and regulatory authority necessary for designation as an ETC.

II. BACKGROUND

A. Company Overview

Virgin Mobile was established as a joint venture between Sprint Nextel and Sir Richard Branson's Virgin Group. Sprint Nextel provides the nationwide wireless backbone for Virgin Mobile's service, including all network infrastructure and wireless transmission facilities. Virgin Mobile purchases wireless network services on a wholesale basis at a price based on Sprint Nextel's cost of providing these services plus a specified margin. As a Mobile Virtual Network Operator ("MVNO"), the company manages and markets all aspects of the customer experience, including pricing, website, handset selection, service offers, entertainment applications and marketing materials. Virgin Mobile's simple and straightforward pay-as-you-go, or prepaid, pricing, along with its differentiated service offerings and high-quality customer service, have redefined the prepaid wireless marketplace and brought significant competition to the overall wireless market. Virgin Mobile's value proposition enables customers to select among an array of flexible service plans that allow them to pay for minutes as they use them or purchase monthly buckets of minutes in advance. The company also offers text and multimedia messaging and an array of mobile entertainment and information services, including music, games and graphics on all handsets.

¹ See 47 U.S.C. § 214(e)(6).

Unlike many carriers, Virgin Mobile does not impose credit checks or long-term service contracts as a prerequisite to obtaining service. Many customers are from lower-income backgrounds and did not previously enjoy access to an attractive, comprehensive and high-quality wireless service because of financial constraints or poor credit history. Virgin Mobile estimates that approximately one-third of its present customers are new to wireless services and 35 percent have an annual household income below \$35,000. Many of these customers also use Virgin Mobile's services sparingly, with a substantial percentage spending less than \$10 per month. Without question, prepaid wireless services have become essential for lower-income customers, providing them with value for their money, access to emergency services on wireless devices, and a reliable means of contact for prospective employers or social service agencies.² By marketing and expanding the availability of appealing wireless services to consumers otherwise unable to afford them, and those previously ignored by traditional carriers, Virgin Mobile has effectively expanded access to wireless services. Indeed, many of Virgin Mobile's customers are among those whom the USF was designed to benefit.

B. Lifeline/Link-Up Program

Universal service has been a fundamental component of U.S. telecommunications policy since adoption of the Act over 70 years ago. Section 254 of the Act embodies the Commission's historical commitment to the concept of universal service, especially for low-income consumers. Section 254(b) designates the principles upon which the Commission shall base its policies for the promotion and advancement of universal service. These principles require the Commission to ensure that all consumers, including low-income consumers, have access to

² Indeed, a recent aggregate survey of Virgin Mobile customer usage patterns indicated that state and city welfare agencies are among the most frequently contacted by customers.

telecommunications services at comparable and affordable rates.³ The Lifeline/Link-Up program is one of several USF support mechanisms that furthers the goals contained in section 254. Lifeline support is designed to reduce the monthly cost of telecommunications services for lower-income consumers by providing them with significant discounts for service. Link-Up provides qualifying low-income consumers with discounts from activation costs.

The Commission has credited the Lifeline/Link-Up program for gradually increasing telephone penetration rates, especially among low-income consumers. Despite the steady rise in penetration rates, however, the FCC has noted that "there is more that we can do to make telephone service affordable for more low-income households" and recently targeted the low Lifeline/Link-Up participation rate as one area for improvement.⁴ Indeed, Commission concerns regarding the underutilization of the Lifeline/Link-Up program have existed since its inception.⁵ To increase awareness of the program, the Commission has recently expanded the qualifying criteria and adopted broader outreach guidelines requiring carriers to better advertise the availability of Lifeline/Link-Up services. Through these actions, the Commission has sought to increase Lifeline/Link-Up participation because "improve[d] participation in the Lifeline/Link-Up program ... would increase telephone subscribership and/or make rates more affordable for low-income households."⁶

³ See 47 U.S.C. § 254. Section 254(b)(3) requires the Commission to determine whether "consumers in all regions of the Nation, *including low-income consumers* and those in rural, insular, and high cost areas ... have access to telecommunications [services]" [emphasis added] 47 U.S.C. § 254(b)(3).

⁴ See *In the Matter of Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Red 8302, 8305 (2004) ("Lifeline/Link-Up Order"). According to the Commission's own statistics, only one-third of households eligible for Lifeline/Link-Up assistance actually participated in the program just a few years ago. See *id.*

⁵ See *Federal-State Joint Board on Universal Service*, Report and Order, 12 FCC Red 8776, 8972 (1997).

⁶ See *Lifeline/Link-Up Order* at 8312.

III. THE NEW YORK PUBLIC SERVICE COMMISSION HAS PROVIDED AN AFFIRMATIVE STATEMENT THAT IT DOES NOT REGULATE CMRS CARRIERS FOR ETC DESIGNATION PURPOSES

Section 254(e) of the Act provides that "only an eligible telecommunications carrier designated under Section 214(e) shall be eligible to receive specific universal service support."⁷ The Act reserves the authority to designate entities as ETCs to state public utility commissions. Pursuant to section 214(e)(6), however, the Commission may designate as an ETC "a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a state commission."⁸ The Commission has established that a carrier must demonstrate that it "is not subject to the jurisdiction of a state commission" before it may review any ETC designation application.⁹ The Commission also has stated that any carrier seeking ETC designation from it must provide the Commission with an "affirmative statement" from the state commission that it lacks jurisdiction to perform the ETC designation.¹⁰

Both the New York Department of Public Service ("DPS") and the New York PSC have affirmatively stated that the PSC lacks jurisdiction over CMRS providers for purposes of ETC designations. Responding to requests by CMRS providers seeking ETC status in New York, the DPS has stated on several occasions that CMRS providers "would not be subject to the application of the PSL [Public Service Law], and consequently the jurisdiction of the New York

⁷ 47 U.S.C. § 254(e).

⁸ See 47 U.S.C. § 214(e)(6).

⁹ See *Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act*, Public Notice, 12 FCC Red 29947, 29948 (1997).

¹⁰ See *Federal-State Joint Board on Universal Service; Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, Twelfth Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Red 12208, 12264 (2000).

Public Service Commission, for the purposes of making the Eligible Telecommunications Carrier designation.”¹¹ The letters enclosed as Exhibit 1 meet the Commission’s requirements for an “affirmative statement” from a state commission that requests for ETC designation are not within its jurisdiction and should be sought from the FCC. Accordingly, Virgin Mobile requests that the Commission designate Virgin Mobile as “a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission.”¹²

IV. VIRGIN MOBILE REQUESTS ETC DESIGNATION IN ITS NEW YORK SERVICE AREA FOR PARTICIPATION IN THE LIFELINE/LINK-UP PROGRAM

A. Virgin Mobile Requests Statewide ETC Designation

As a non-rural carrier, Virgin Mobile is required to describe the areas within which it requests ETC designation. The company requests ETC designation for its entire service area in New York, which encompasses nearly every zip code in the state. Consequently, Virgin Mobile requests ETC designation throughout the State of New York. Virgin Mobile understands that its service area overlaps with many rural carriers in New York, but maintains that the public interest factors described below justify its designation in these carriers’ service areas, especially since it only seeks ETC designation for purposes of participation in the Lifeline/Link-Up program.

Virgin Mobile’s authorized service area covers the service areas of the following non-rural telephone companies: Verizon New York, Inc., Citizens Communications Company of New York, Inc., and Frontier Telephone, Inc.

Virgin Mobile’s authorized service area covers the service areas of the following rural telephone companies:

Alltel of New York, Inc.

¹¹ See Exhibit 1.

¹² 47 U.S.C. § 214(e)(6).

Armstrong Telephone Company – New York
 Berkshire Telephone Corp.
 Cassadaga Telephone Corp.
Chautauqua & Erie Communications, Inc.
 Chazy & Westport Telephone Corp.
 Citizens Telecommunications Company
 Citizens Telephone Company of Hammond New York
 Crown Point Telephone Corp.
 Delhi Telephone Company
 Deposit Telephone Company, Inc.
 Dunkirk & Fredonia Telephone Company
 Edwards Telephone Company
 Empire Telephone Corporation
 Frontier Communications of AuSable Valley
 Frontier Communications of New York, Inc.
 Frontier Communications of Seneca-Gorham'
 Frontier Communications of Sylvan Lake
 Germantown Telephone Company, Inc.
 Hancock Telephone Company
 Margaretville Telephone Company, Inc.
 Newport Telephone Company, Inc.
 Nicholville Telephone Company, Inc.
 Ogden Telephone Company
 Oneida County Rural Telephone Company
 Ontario Telephone Company, Inc.
 Oriskany Falls Telephone Corp.
 Patterson Telephone Company
 Port Bryon Telephone
 State Telephone Corp.
 Taconic Telephone Corp.
 The Champlain Telephone Company
 The Middleburgh Telephone Company
 Trumansburg Telephone Company, Inc.
 Township Telephone Company
 Vernon Telephone Company
 Warwick Valley Telephone Company, Inc.

B. Virgin Mobile Requests ETC Designation for Participation in the Lifeline/Link-Up Program

Virgin Mobile requests ETC designation in New York for the sole purpose of participating in the Lifeline/Link-Up program. Virgin Mobile will not seek to provide services supported by the USF's high-cost program. As more fully described below, the instant request to

participate in the Lifeline/Link-Up program promotes the goals of universal service and offers many benefits to low-income customers in the State of New York. The Lifeline/Link-Up services provided by Virgin Mobile will contain many features specifically designed for qualifying customers. Indeed, Virgin Mobile's Lifeline/Link-Up plans will provide affordable and convenient wireless services to qualifying New York customers, many of whom are otherwise unable to afford wireless services.

V. VIRGIN MOBILE SATISFIES THE REQUIREMENTS FOR DESIGNATION AS AN ETC

Section 214(e)(1) of the Act and section 54.201(d) of the Commission's rules provide that applicants for ETC designation must be common carriers that will offer all of the services supported by universal service, either using their own facilities or a combination of their own facilities and the resale of another carrier's services. Applicants also must commit to advertise the availability and rates of such services.¹³ As detailed below, Virgin Mobile satisfies each of the above-listed requirements.

A. Virgin Mobile is a Common Carrier

Section 153(10) of the Act defines a common carrier as "any person engaged as a common carrier for hire, in interstate or foreign communications by wire or radio"¹⁴ The Commission has determined on numerous occasions that resellers of mobile wireless services shall be treated as common carriers for regulatory purposes. As a reseller of wireless communications services, therefore, Virgin Mobile is a common carrier eligible for designation as an ETC.

B. Virgin Mobile Will Provide the Supported Services Through Resale

¹³ See 47 U.S.C. § 214(e)(1) and 47 C.F.R. § 54.201(d).

¹⁴ 47 U.S.C. § 153(10).

As described above, Virgin Mobile purchases wireless network services on a wholesale basis from Sprint Nextel to provide its services throughout the State of New York. Concurrent with the filing of the instant Petition, Virgin Mobile has filed a Petition for Forbearance requesting that the Commission forbear from applying section 214(e)(1)(A) of the Act requiring ETCs to offer the supported services either using their own facilities or a combination of their own facilities and the resale of another carrier's services.¹⁵ As Virgin Mobile notes in its Petition for Forbearance, a grant of forbearance would enable Virgin Mobile to advance the deployment of discounted telecommunications services, greatly benefiting its low-income customers. The company requests that the Commission review the instant Petition contemporaneously with its review of Virgin Mobile's Petition for Forbearance. Prompt action on each item, moreover, will ensure that Virgin Mobile can expeditiously bring discounted telecommunications services to qualifying New York consumers.

C. Virgin Mobile Offers All of the Required Services and Functionalities

Through its wholesale arrangement with Sprint Nextel, Virgin Mobile is able to provide all of the services and functionalities supported by the universal service program as set forth in section 54.101 of the Commission's regulations throughout the State of New York. Virgin Mobile, moreover, will make these services and functionalities available to any qualifying customer in the State of New York. As described herein, Virgin Mobile's request for ETC designation complies with section 214(e)(1) of the Act since it will offer all of the services and functionalities supported by universal service.

1. Voice Grade Access to the Public Switched Telephone Network.

¹⁵ See 47 U.S.C. § 214(e)(1)(A).

Virgin Mobile provides voice grade access to the public switched telephone network ("PSTN") through the purchase of wholesale network services from Sprint Nextel. Virgin Mobile also offers its customers services at bandwidth rates between 300 and 3,000 MHz as required by the Commission's regulations.¹⁶

2. Local Usage.

As part of the voice grade access to the PSTN, an ETC must provide local calling services to its customers. The FCC has determined that a carrier satisfies the local usage requirements when it offers customers rate plans containing varying amounts of local usage.¹⁷ Virgin Mobile offers a variety of rate plans that provide its customers with local usage capabilities included within the flat per minute or per monthly rate. Virgin Mobile also commits to complying with any minimum local usage requirements adopted by the FCC in the future.

3. DTMF Signaling or its Functional Equivalent

Virgin Mobile provides dual tone multi-frequency ("DTMF") signaling to expedite the transmission of call set up and call detail information throughout its network. All wireless handsets offered for sale by the company are DTMF-capable.

4. Single-Party Service or its Functional Equivalent

"Single-party service" means that only one party will be served by a subscriber loop or access line during a telephone transmission. Virgin Mobile provides single party service to its customers for the duration of each telephone call, and does not provide multi-party (or "party-line") services.

¹⁶ See 47 U.S.C. § 54.101(a)(1).

¹⁷ See e.g., *Farmers Cellular, Inc.*, 18 FCC Rcd 3848, 3852 (2003); *Pine Belt Cellular, Inc. and Pine Belt PCS, Inc.*, 17 FCC Rcd 9589, 9593 (2002); *Western Wireless Corp., Petition for Designation as an Eligible Telecommunications Carrier in the State of Wyoming*, 16 FCC Rcd 48, 52 (2000).

5. Access to Emergency Services

Virgin Mobile provides nationwide access to 911 emergency services for all of its customers. Virgin Mobile also complies with the Commission's regulations governing the deployment and availability of enhanced 911 compatible handsets.

6. Access to Operator Services

Virgin Mobile provides all of its customers with access to operator services.

7. Access to Interexchange Services

Virgin Mobile's service provides its customers with the ability to make interexchange, or long distance, telephone calls. Domestic long distance capabilities are included in Virgin Mobile's service with no additional charges as minutes are not billed separately for local or domestic long distance services.

8. Access to Directory Assistance

All Virgin Mobile customers are able to dial "411" to reach directory assistance services from their wireless handsets.

9. Toll Limitation

Toll limitation allows customers to block the completion of outgoing long distance calls to prevent them from incurring significant long distance charges and risking disconnection. As described above, Virgin Mobile provides its wireless service on a prepaid, or pay-as-you-go, basis. Virgin Mobile's service, moreover, is not offered on a distance-sensitive basis and minutes are not charged separately for local or domestic long distance services. Customers also must specifically authorize access for international services, for which additional charges may

apply. The nature of Virgin Mobile's service mitigates concerns that low-income customers will incur significant charges for long distance calls, risking disconnection of their service.

D. Advertising of Supported Services

Virgin Mobile will advertise the availability and rates for the services described above using media of general distribution as required by section 54.201 of the Commission's regulations.¹⁸ The company advertises the availability of its services through newspapers, magazines, radio, the Internet, and billboards. Virgin Mobile's third-party retail partners also heavily promote its services. These advertising campaigns have been highly effective in reaching low-income customers and promoting the availability of cost-effective wireless services to this consumer segment.

Virgin Mobile will supplement these methods of communication to specifically advertise and promote the availability of its Lifeline/Link-Up offerings to qualifying customers throughout the State of New York. Virgin Mobile intends to distribute brochures and posters at various state and local social service agencies to inform customers of the availability of its Lifeline/Link-Up services. In addition, Virgin Mobile may market its Lifeline/Link-Up services through its Re*Generation pro-social program, which is a program that connects at-risk youth with young people who want to make a difference through partnerships with innovative not-for-profit organizations. The company also will heavily promote these offerings to its existing customers—many of whom may otherwise qualify for Lifeline/Link-Up—through email and text messages.

¹⁸ See 47 C.F.R. § 54.201.

VI. DESIGNATION OF VIRGIN MOBILE AS AN ETC WOULD PROMOTE THE PUBLIC INTEREST

A. Goals of the Communications Act

One of the principal goals of the Act, as amended by the Telecommunications Act of 1996 is “to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies” to all citizens, regardless of geographic location or income.¹⁹ There is no question that designation of Virgin Mobile as an ETC in New York will further the public interest by providing New York consumers, especially low-income consumers, with lower prices and higher quality services. Many lower-income customers in New York have yet to reap the full benefits of the intensely competitive wireless market. Whether because of financial constraints, poor credit history, or intermittent employment, these consumers often lack the countless choices available to most consumers. Designating Virgin Mobile as an ETC in New York, therefore, will enable it to expand the availability of affordable telecommunications services to qualifying New York consumers, leading to lower prices and increased choice.²⁰

The request for ETC designation must be examined in light of the Act’s goals of providing low-income consumers with access to telecommunications services. The primary purpose of universal service is to ensure that consumers—especially low-income consumers—receive affordable and comparable telecommunications services. Given this context, designating Virgin Mobile as an ETC would benefit New York consumers, especially its many low-income consumers eligible for Lifeline/Link-Up services—many of whom are the intended beneficiaries

¹⁹ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56.

²⁰ See *LXC Forbearance Order*, 11 FCC.Rcd at 20760.

of universal service. The company's participation in the Lifeline/Link-Up program also *undoubtedly would increase opportunities for the company to serve New York customers with appealing and affordable service offerings.*

Designation of Virgin Mobile as an ETC would promote competition and increase the pressures on other carriers to target low-income consumers with service offerings tailored to their needs, greatly benefiting this much ignored consumer segment. Virgin Mobile will bring the same entrepreneurial spirit that has reinvigorated the wireless industry to the New York Lifeline/Link-Up market, helping to redefine the wireless experience for many low-income consumers in the state. Other carriers, therefore, will have the incentive to improve their existing service offerings and tailor service plans to contain service terms and features appealing to lower-income customers.

While Virgin Mobile has experienced success in deploying wireless services to low-income consumers, internal company analysis suggests that many low-income customers still intermittently discontinue service because of economic constraints. ETC designation in New York would enable Virgin Mobile to offer appealing and affordable service offerings to low-income New York customers to ensure that they are able to afford wireless services on a consistent and uninterrupted basis. Providing Virgin Mobile with the authority necessary to offer discounted Lifeline/Link-Up services to those most in danger of losing wireless service altogether undoubtedly promotes the public interest.

B. Impact on the Universal Service Fund

Virgin Mobile's request for designation as an ETC solely for Lifeline/Link-Up purposes also would not unduly burden the USF or otherwise reduce the amount of funding available to other ETCs. The secondary role of Lifeline/Link-Up support with respect to overall USF

expenditures is well documented. According to the Joint-Board's most recent monitoring report, *Lifeline/Link-Up funding totaled approximately \$800 million in 2005 while high-cost program* expenditures amounted to approximately \$4 billion—five times the amount of Lifeline/Link funding.²¹ Although many parties have raised concerns over the growth in the USF's high-cost program, the Lifeline/Link-Up program has triggered no similar outcry. Virgin Mobile understands the concerns over growth in high-cost expenditures and has participated in the Commission's proceedings addressing these issues.²² Designation of Virgin Mobile as an ETC in New York, however, raises no similar concerns and any incremental increases in Lifeline/Link-Up expenditures are far outweighed by the significant public interest benefits of expanding the availability of affordable wireless services to low-income New York consumers.

VII. ANTI-DRUG ABUSE CERTIFICATION

Virgin Mobile certifies that no party to this Petition is subject to denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988.²³

²¹ See *Universal Service Monitoring Report*, CC Docket 98-202, Tables 2.2 and 3.1 (filed Dec. 29, 2006).

²² See *Virgin Mobile ex parte*, CC Docket 96-45 (filed March 4, 2005).

²³ See Exhibit 2.

VIII. CONCLUSION

As discussed above, designation of Virgin Mobile as an ETC in the State of New York accords with the requirements of section 214(e)(6) of the Act and is in the public interest.

WHEREFORE, for all of the foregoing reasons, Virgin Mobile respectfully requests that the Commission designate Virgin Mobile as an ETC in the State of New York.

Respectfully submitted,

VIRGIN MOBILE USA, L.P.

A handwritten signature in dark ink, appearing to read "Antoinette Cook Bush / gmb", is written over a horizontal line.

Antoinette Cook Bush
John M. Beahn
Skadden, Arps, Slate, Meagher & Flom LLP
1440 New York Avenue
Washington D.C. 20005
(202) 371-7000

Its Attorneys

Peter Lurie
General Counsel and Co-Founder
Virgin Mobile USA, L.P.
10 Independence Blvd
Warren, NJ 07059
(908) 607-4017

EXHIBIT 1

**AFFIRMATIVE STATEMENT OF THE
NEW YORK PUBLIC SERVICE COMMISSION**

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

PUBLIC SERVICE COMMISSION

WILLIAM M. FLYNN
Chairman
THOMAS J. DUNLEAVY
JAMES D. BENNETT
LEONARD A. WEISS
NEAL N. GALVIN



DAWN K. JABLONSKI
General Counsel

JANET HAND DEIXLER
Secretary

March 27, 2003

TO WHOM IT MAY CONCERN:

Re: Nextel CMRS Jurisdiction

We have received a letter request from NPCR, Inc. d/b/a Nextel Partners ("Nextel Partners") for a statement that the State of New York does not exercise jurisdiction over Commercial Mobile Radio Service providers for purposes of making determinations concerning eligibility for Eligible Telecommunications Carrier designations under 47 U.S.C. §214(e) and 47 C.F.R. §54.201 *et seq.* In response to this request, please be advised that the New York State Public Service Law (PSL) §5 provides that:

Applications of the provisions of this chapter [i.e., the PSL] through one-way paging or two-way mobile radio telephone service with the exception of such services provided by means of cellular radio communication is suspended unless the commission [i.e., the NYS Public Service Commission] . . . makes a determination, after notice and hearing, that regulation of such services should be reinstituted to the extent found necessary to protect the public interest because of a lack of effective competition.

The New York State Public Service Commission has not made a determination that regulation should be reinstituted under PSL §5. Consequently, based on the representation by Nextel Partners that it is a CMRS provider, Nextel Partners would not be subject to the application of the PSL, and consequently the jurisdiction of the New York Public Service Commission, for the purposes of making the Eligible Telecommunications Carrier designation.

Sincerely,

A handwritten signature in cursive script, appearing to read "Elizabeth H. Liebschutz".

Elizabeth H. Liebschutz
Assistant Counsel

STATE OF NEW YORK DEPARTMENT OF PUBLIC SERVICE

THREE EMPIRE STATE PLAZA, ALBANY, NY 12223-1350

Internet Address: <http://www.dps.state.ny.us>

PUBLIC SERVICE COMMISSION

WILLIAM M. FLYNN

Chairman

THOMAS J. DUNLEAVY

JAMES D. BENNETT

LEONARD A. WEISS

NEAL N. GALVIN



DAWN JABLONSKI RYMAN

General Counsel

JACLYN A. BRILLING

Secretary

March 18, 2004

Mitchell Brecher
Greenberg Taurig, LLP
800 Connecticut Avenue, N.W.
Suite 500
Washington, D.C. 20006

RE: Case 04-C-0227 - Petition of TracFone Wireless, Inc. for a Declaratory Ruling that the Company, a Commercial Mobile Radio Service Provider, is not subject to Commission Jurisdiction.

Dear Mr. Brecher,

I am responding to your letter to Secretary Brilling, dated February 23, 2004, on behalf of TracFone Wireless, Inc. ("TracFone"). In your letter, you requested a statement that the State of New York does not exercise jurisdiction over Commercial Mobile Radio Service (CMRS) providers for purposes of making determinations concerning eligibility for Eligible Telecommunications Carrier designations under 47 U.S.C. §214(e) and 47 C.F.R. §54.201 et seq. You indicated that TracFone is an authorized reseller of CMRS throughout the United States, including New York.

In response to your request, please be advised that the New York State Public Service Law §5 provides that:

Applications of the provisions of this chapter [the Public Service Law] through one-way paging or two-way mobile radio telephone service with the exception of such services provided by means of cellular radio communication is suspended unless the [New York State Public Service] commission . . . makes a determination, after notice and hearing, that regulation of such services should be reinstituted to the extent found necessary to protect the public interest because of a lack of effective competition.

Mr. Mitchell Brecher

March 18, 2004

The New York State Public Service Commission has not made a determination that regulation should be reinstituted under Public Service Law §5. Consequently, based on the representation by TracFone that it is a CMRS provider, TracFone would not be subject to the application of the Public Service Law and, therefore, the jurisdiction of the New York Public Service Commission for the purposes of making the Eligible Telecommunications Carrier designation.

As this letter is responsive to your request for a statement, Case 04-C-0227 will be closed.

Sincerely,



Kathleen H. Burgess
Assistant Counsel

EXHIBIT 2
CERTIFICATION

Declaration of Virgin Mobile USA, L.P.

I, Peter Lurie, do hereby declare under penalty of perjury as follows:

1. I am the General Counsel and Co-Founder of Virgin Mobile USA, L.P., a Delaware Limited Partnership with its principal place of business at 10 Independence Blvd, Warren, NJ 07059.

2. I have read Virgin Mobile's Petition for Designation as an Eligible Telecommunications Carrier in the State of New York and confirm the information contained therein to be true and correct to the best of my knowledge.

2. To the best of my knowledge, the Petitioner referred to in the foregoing Petition, including all officers, directors, or persons holding more five percent or more of the outstanding stock or shares (voting or non-voting) are not subject to denial of federal benefits, including FCC benefits, pursuant to Section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. § 862.

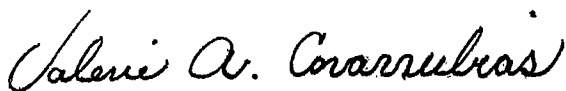
3. I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on December 5, 2007



Peter Lurie
General Counsel and Co-Founder

Subscribed and sworn before me
This 5th day of December 2007.



Notary Public

Valerie A. Covarrubias
Notary Public, District of Columbia
My Commission Expires 7-31-2010

